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REDACTED – *For Public Inspection*

August 3, 2005

BY HAND

Gary Remondino
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AT&T Corp., Transferor, to SBC Communications Inc., Transferee, WC Docket No 05-65***

Dear Mr. Remondino:

We are writing on behalf of SBC Communications Inc. and AT&T Corp. ("the Applicants") in response to Qwest's *ex parte* presentations to Commission staff on July 6 and 7, 2005. Though its intentions were likely quite different, Qwest has illustrated both the pro-competitive rationale for the SBC-AT&T transaction and its obvious self-interest in seeking to force the Applicants to divest assets which Qwest could then purchase at fire-sale prices.

Qwest begins its presentation by demonstrating that it sells a wide variety of voice, data and IP services to retail and wholesale business customers in competition with SBC, AT&T, MCI and others. Qwest does not claim that it will not continue to compete after the Applicants' transaction closes. Nor does Qwest claim that other major competitors – including, but not limited to, MCI (whether acquired by Verizon or not), Sprint, Broadwing, Global Crossing, Level 3, WilTel, and numerous systems integrators – will disappear. Qwest's presentation, therefore, supports the Applicants' view that there are, and will remain, many sources of competition in the provision of communications services to retail and wholesale business customers.

Then, in a page entitled "What Do Customers Want," Qwest largely summarizes SBC's reasons for this transaction: "Ubiquitous supplier is necessary for integrated solutions in order to serve business customers." Notwithstanding prior transactions and other billion-dollar efforts, SBC has not been able to become a ubiquitous supplier offering integrated solutions nation-wide or worldwide. Qwest itself is the product of a merger of a major interexchange carrier and an RBOC that was aimed at creating such a supplier. The Applicants here are seeking to form the

same combination so that they, too, can be better positioned to offer more cost-effective solutions to serve their customers.[1]

In fact, Qwest recognizes the efficiency-enhancing benefits of this transaction:

> "By having a more integrated network, as is the case where the same carrier handles the circuit end to end, a carrier obtains better performance, reliability, and security, all of which are significant measures of quality and cost." (Page 7.)

In essence, therefore, Qwest's complaint amounts to nothing more than a recognition that this transaction will create a more efficient competitor. That fact, however, supports approval of the pending applications, not their rejection. It is axiomatic that the competition laws, and the public interest itself, are intended to protect the competitive process and to promote the interest of consumers, not to protect specific competitors.

The only new or specific information in Qwest's presentation are in charts entitled "Qwest In Region Retail Pricing Pressure Examples from AT&T and MCI" (Page 12) and "Out of Region Retail Pricing Examples" (Page 14). To the extent these hand-picked and unverified examples are relevant, they actually support the Applicants' positions.

First, notwithstanding Qwest's expressed concerns about the effect of this transaction on wholesale special access services, as the headings themselves state, the examples Qwest gives reflect retail, not wholesale, transactions. Thus, they provide no information concerning the impact of this transaction on the marketplace for special access or other wholesale services.

Second, the examples on Page 12 **CONFIDENTIAL INFORMATION BEGINS:**

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[1] Indeed, Qwest's Chairman recently claimed that this transaction was intended to create a firm that matched Qwest's assets. Speech of Richard C. Notebaert before The Executives' Club of Chicago, June 8, 2005, http://www.qwest.com/about/company/management/speeches/Executives_Club_of_Chi.pdf ("[I]f the proposed mega-mergers between Verizon/MCI and SBC/AT&T are approved, those new organizations will spend huge amounts of time and money on their networks over the next months and even years. We're already where they want to go in that respect …").

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CONFIDENTIAL INFORMATION ENDS. Far from demonstrating a problem, these examples demonstrate the vigor of competition in retail business services.

Similarly, the four examples on Page 14 support many of the points the Applicants have been making. **CONFIDENTIAL INFORMATION BEGINS**:

[2]

CONFIDENTIAL INFORMATION ENDS.

The other pages of Qwest's presentation rehash arguments it has previously made and to which the Applicants have previously responded. As a general matter, Qwest continues to view this transaction (and the pending Verizon-MCI transaction) as a single four-party merger. As the Commission well knows, however, these transactions are distinct and if both are approved two stronger competitors, not one, will emerge. Qwest assumes, for example, that AT&T's assets will not be used to compete aggressively in Verizon's ILEC territory and MCI's assets will not be used to compete aggressively in SBC's ILEC territory. SBC/AT&T certainly plan to compete vigorously for business customers throughout the country using all of the assets at its disposal, and economic imperatives dictate that Verizon/MCI do so as well.

Qwest argues (at pages 9 and 10) that the proposed transactions will enable SBC and Verizon to eliminate their most significant wholesale competitors, but Qwest offers no new evidence to support that statement. Certainly, SBC is not eliminating competition from MCI within its region. Moreover, Qwest offers no evidence that AT&T is somehow a unique wholesale competitor. As we have demonstrated elsewhere, AT&T is a minor provider of special access services and there are many other special access providers in the areas where to, or AT&T offers those services.[3] Qwest's assertion on pages 10 and 13 that AT&T was threatening

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[2] **CONFIDENTIAL INFORMATION BEGINS:**

CONFIDENTIAL INFORMATION ENDS.

[3] *See, e.g., ex parte* letter from Gary Phillips, SBC, and Lawrence Lafaro, AT&T, to Marlene Dortch, August 1, 2005; *ex parte* letter of Peter Schildkraut, Arnold & Porter, to (continued...)

to, or would in the absence of this transaction, expand the availability of its special access wholesale service is devoid of both evidentiary and logical support. AT&T has built special access facilities where it has a committed customer with sufficient demand to make building its own facilities to that customer more economical than leasing them. Other carriers would be in the same position. Qwest's assertion that AT&T and MCI obtain volume discounts in their purchase of special access services that are unavailable to other carriers with lower levels of demand is simply false.[4] Its claim that acquisition of AT&T would eliminate AT&T's arbitrage of SBC's special access services, therefore, fails because other carriers can and do obtain the same discounts AT&T receives.

Qwest's claim that the transaction will reduce competition in retail business services is equally unavailing. It simply ignores the public and record evidence that (1) AT&T is no longer competing to attract mass market and small business customers and (2) AT&T and SBC are two of many intramodal and intermodal competitors (Qwest included) for the communications business of enterprise customers.[5]

Qwest's intentions are clear; it is seeking to use these proceedings to obtain by regulatory fiat what it could not obtain in the marketplace. As the remedy section of its presentation makes clear, having been unsuccessful in its efforts to acquire MCI, Qwest is trying to persuade regulators to force SBC and Verizon to divest AT&T's and MCI's network assets and the customers that are served by them.[6] Of course, many of these customers chose to award

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(...continued)

Marlene Dortch, July 8, 2005, transmitting "SBC/AT&T Merger: Competitive Analysis of Special Access" by Dennis Carlton and Hal Sider; Joint Opposition Of SBC Communications Inc. And AT&T Corp., Reply Declaration of Dennis W. Carlton and Hal S. Sider (May 10, 2005).

4 Joint Opposition Of SBC Communications Inc. And AT&T Corp., Declaration of Parley C. Casto (May 10, 2005).

5 Joint Opposition Of SBC Communications Inc. And AT&T Corp., pp. 95-133; Description of the Transaction, Public Interest Showing, and Related Demonstrations, pp. 44-101 and Declaration of Dennis W. Carlton and Hal S. Sider, ¶¶ 44-55. 77-106 (February 21, 2005).

6 *See* Chairman's Remarks, 2005 Annual Meeting, May 24, 2005, http://www.qwest.com/about/company/management/speeches/2005_Annual_Meeting.pdf ("if these two mammoth mergers that are proposed do move forward, there undoubtedly will be requirements that the parties divest some of their assets prior to approval. And that may well create attractive opportunities for Qwest.").

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contracts to AT&T (or MCI) notwithstanding Qwest's competitive efforts to win their business. Though the rights of those customers to maintain their current service arrangements are of no moment to Qwest, they should be important to the Commission.[7]

Of course, there is no need for a remedy if grant of the pending application is in the public interest. Qwest's presentation does nothing to weaken the Applicants' showing that this transaction will not reduce competition and otherwise will promote the public interest.

Respectfully submitted,

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[7] As to Qwest's suggestion that SBC be required to provide stand-alone DSL service, that issue is not merger specific, and the appropriate forum (if any) is a rulemaking of general applicability.